

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT LEE FOSTER,

Petitioner,

Case No. 1:07-cv-854

v.

Hon. Janet T. Neff

WILLIE O. SMITH,

Respondent.

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ORDER APPROVING REPORT AND RECOMMENDATION

The court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C).

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed January 5, 2009, is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that petitioner's motion to stay (Dkt. No. 35) is **GRANTED** for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that this habeas corpus action is hereby stayed until petitioner files a motion to amend his petition to include any subsequently exhausted claims. This stay is conditioned upon petitioner's filing of a motion for relief from judgment in the Calhoun County Circuit Court pursuant to Mich. Ct. R. 6.500 within thirty days of the date of this order. Petitioner's request to amend his habeas petition in this court must be filed not later than thirty days after a final decision by the Michigan Supreme Court on petitioner's application for relief from judgment. The motion to amend the petition must include a description of the

newly exhausted claims and the dates and substance of the decisions reached at each step of state-court review.

IT IS FURTHER ORDERED that if petitioner fails to comply with the deadlines imposed in the Report and Recommendation, the court may dismiss the petition.

IT IS FURTHER ORDERED that petitioner must advise the court of any change of address during the pendency of the stay.

IT IS FURTHER ORDERED that this case is administratively closed until such time as petitioner files a motion to amend his petition in accordance with the procedure set forth in the Report and Recommendation.

Dated: January 23, 2009

/s/Janet T. Neff

JANET T. NEFF

UNITED STATES DISTRICT JUDGE